By Section 70 of the Conveyancing and Law of Property Ordinance (Cap. 118) a purchaser can be said to have notice of any fact if it "would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent". And in *Bailey v. Barnes*[1], Lindley, L.J. at p. 35 held that the expression "ought reasonably" must mean ought as a matter of prudence, having regard to what is usually done by men of business under similar circumstances.

The question is therefore were the circumstances such as ought reasonably to have put Mrs. Oon upon such inquiry as would have led to her discovering that the property had been improperly obtained.

In my opinion the circumstances existing in Malaya in July, 1945 were such that should have put any solicitor upon such inquiry and I find therefore that the purchaser by reason of the fact that knowledge of the defect in title should have come to the notice of her solicitor was not a *bona fide* purchaser without notice.

In view of this finding it will not be necessary to consider the other submission made by Mr. Hogan namely, that the agreement of July, 1945 is merged in the conveyance of August, 1945 which is void under Section 12 of Ordinance 40 of 1949 and for that reason cannot be relied upon by second defendant.

In consequence of the findings set out above I order as follows :—

(1) that the conveyance dated 1st November, 2603 (1943) is null and void and is set aside;

(2) that the Register of Deeds, Penang be rectified by the cancellation of all entries relating to the said conveyance;

(3) that the caveat Notice No. 97/6 dated 24th October, 1946 filed by the second defendant be discharged and vacated; and

(4) that possession of the property in question and the title deeds relating thereto be delivered to plaintiff.

The plaintiff has received $10,000/- Japanese currency for his property and must refund the amount as revalued at first November, 1943 to the second defendant. But the second defendant must account to the plainitff for mesne profits from the time the property has been in her possession. The mesne profits to be ascertained by an enquiry before the Registrar.

Costs to plaintiff.

Order accordingly.

PUBLIC PROSECUTOR v. TAN CHIN SENG.

[App. Crim. Juris. (Taylor, J.) March 30, 1951]

[Selangor — Criminal Appeal No. 85 of 1950]

Forfeiture — Contraband in hire purchase car — forfeiture proceedings — "innocent" — meaning of.

When a contraband offence has been proved and application is made for forfeiture of a vehicle the registered owner is the proper respondent and he should be required to shew cause unless he has in fact no interest in the property.

Any other person claiming a proprietory interest, e.g. a hire purchase vendor, may appear and be heard.

Where there is more than one owner, the vehicle should not be released unless all the owners are not only innocent of complicity in the actual offence but innocent of connivance or giving facilities.

Case referred to :—

(1) *Leggate v. Brown* (1950) 2 All E.R. 564.

CRIMINAL APPEAL from Sessions Court, Klang.

T. R. Hepworth for the appellant, the Public Prosecutor.

N. A. Marjoribanks for the respondent, the registered owner.

P. J. D. Regester for the interveners (the hire purchase vendors).

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : —A man named Tan Chin Teck was convicted in the Sessions Court at Klang of smuggling a considerable quantity of opium which was found in a specially contrived compartment concealed under the rear seat of a passenger motor car. The car was registered in the name of a relative of the accused named Tan Chin Seng and after the conviction a notice was issued requiring him to show cause why the car should not be forfeited. At the hearing separate counsel appeared for Tan Chin Seng and for the Motor Traders Finance Company, Limited, who claimed to be the owners of the car by virtue of a hire-purchase agreement on which instalments were said to be in arrears. The record is not clear or well-arranged but it appears that the Company were treated as the owners and that Tan Chin Seng was never in fact called upon to shew cause although the proceeding had been instituted against him. The President ordered the car to be returned to the Company. The Public Prosecutor appealed.

The first point taken was that the Company were not properly before the Sessions Court. It is true that they were not served and it was not necessary that they should be served. Where the Police, in a traffic case

for instance, or the Customs Department in a case of seizure, are concerned with a car, they have ordinarily no means of knowing whether the car is on hire-purchase or not. I do not think they need enquire. It is sufficient for them to deal with the registered owner of the car but if another party, claiming to be the owner, appears and applies to be heard he certainly should be heard.

For the purposes of such proceedings as these it is not necessary that a person should be the absolute owner. In a variety of circumstances more than one party has an interest in the property and no one of them is an unqualified owner, either in fact or in law. It is seldom necessary for this purpose to decide the technical question of ownership and it is certain that a summary proceeding of this sort, often before a lay Magistrate, is an extremely unsuitable forum for the litigation of such a question — *Leggate v. Brown*[1].

I gather that the argument at first instance amounted in effect to this. The company said : — "We are the owners; we were wholly innocent of any kind of complicity, therefore the car ought to be returned to us." There is ample authority for the proposition that if the owner is innocent the car should be returned to him. I do not think that in this context "innocent" means : — "innocent of the specific offence charged" in the sense that he was not an actual abettor. I think that in order to show that he was innocent for the purpose of avoiding forfeiture, the owner must shew that he did not connive in or facilitate the offence in any way. The authorities cited all deal with sole owners. Where there is more than one owner the innocence of one will not protect the car from forfeiture if there was complicity in the co-owner. Say a taxi was owned by two men in equal partnership and they drove it alternately and one of them was convicted of actual smuggling by means of the taxi, I do not think it could seriously be argued that the car should be returned to the innocent partner. Whether he should be allowed to redeem it on paying half its value is a question on which I express no opinion. The point I decide now is that the car should not be released unless all the "owners" are innocent in the sense explained.

The truth is that hire-purchase vendors are not the real owners of a car though they have a genuine interest in it. It was agreed by all counsel that the ostensible owner has power to create a lien in favour of a repairer which would be good as against the hire-purchase vendors even though the instalments were in arrear. The vendors have no right whatever to possession of the car so long as the instalments are regularly paid. They have merely a contingent right to recover possession in case of default and this right is conferred upon them only by virtue of the contract between themselves and the hire-purchaser. This contract cannot affect the Crown or any one else who is not a party to it. It was not properly proved in this case that the motor company were owners in any sense but I will assume in their favour that they had some genuine interest in it, and were properly heard, and I accept the implied finding of the learned President that they were wholly innocent. But that ought not to have concluded the matter. The registered owner of the car, unless it were clearly made out that he had no beneficial interest whatever, should also have been required to shew cause. As this had not been done, and in order to avoid sending the matter back to the Sessions Court I called upon him to shew cause before me. His counsel accepted this and did not desire an adjournment.

From the written evidence it was not possible to gather precisely how the special compartment had been contrived. Clearly it would not be seen when passengers were sitting in the seat but it might still have been immediately obvious to the owner of the car that his upholstery had been altered. The Court therefore inspected the car with the aid of counsel for all concerned. In fact the compartment was concealed in such a way that even the owner (supposing him not to have authorised the alteration) would not have discovered it unless he had personally cleaned the interior of the car with such meticulous care as to notice that a special kind of upholstery screw had been substituted for the original screws. It was agreed that a competent workman could have made the alteration in a hour or two and that it was recent. The physical evidence therefore was consistent with the special compartment having been made without the consent or knowledge of the owner.

Tan Chin Seng then gave evidence and was cross-examined by counsel for the Public Prosecutor. The evidence showed that he was in Singapore at the time of the offence. He had lent the car to Tan Chin Teck on more than one occasion. There was no evidence at all to suggest that Tan Chin Seng had any reason to believe that his friend was a smuggler. In view of this, combined with the physical evidence already stated, I was of opinion that he had shewn cause and I accordingly directed the return of the car to him or his agents authorised in writing.

Order accordingly.